

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DANA BOWMAN, Individually	§	Civil Action No.: 1:13-cv-771
	§	
Plaintiff	§	
	§	
v.	§	JURY TRIAL DEMANDED
	§	
LMR, LLC d/b/a Baymont Inn and Suites	§	
	§	
Defendant	§	

DEFENDANT'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM

TO THE HONORABLE COURT:

NOW COMES, LMR, LLC d/b/a Baymont Inn and Suites (“Defendant”) and files this Motion to Dismiss for Failure to State a Claim, responding to the Complaint filed herein by Dana Bowman (“Plaintiff”).

I.

RULE 12(b)(6) MOTION TO DISMISS

1. Nature of the case. The Complaint basis claim is against Defendant “for failing to design, construct, and/or own or operate hotel facilities that are fully accessible to and independently usable by, disabled people.... . Defendant’s pool does not have a fixed lift or other acceptable means of entry for disabled persons, notwithstanding that such modifications are readily achievable.” (Complaint, at paragraph 2).

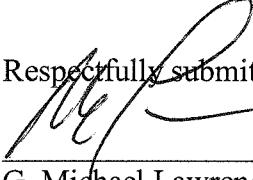
2. Defendant’s Facility. Defendant’s facility does, in fact, have a fixed pool lift at the facility in question. *See*, Exhibits “A”, “B” and “C” attached hereto and incorporated herein by reference. Plaintiff’s Complaint has no allegations and has submitted no basis in law or fact to support the claims that Defendant’s facilities are not in compliance with applicable law.

5. Dismissal. In this case, the pleading lacks specificity or particularity under any standard as to the claims that Defendant’s facilities are not legally compliant. *See*, Rule 12(b)(6) FRCP. Accordingly, the Complaint should be dismissed as to those parties. In addition and/or in

the alternative, Plaintiff's request for injunctive relief should be dismissed as moot, based on the facilities that are installed on Defendant's property. *See, e.g., Buckhannon Board and Care Home, Inc., et al., v. West Virginia Department of Health and Human Resources, et al.*, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001).

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon due proceedings, Defendant's Motion to Dismiss be granted and that Plaintiff's claims and causes of action in this lawsuit be dismissed. Alternatively, Defendant prays that upon full and final hearing, Plaintiff take nothing by the claims and causes of action asserted herein and that Defendant be awarded appropriate relief, including reasonable attorneys' fees and costs. Defendant further prays for general relief.

Respectfully submitted,



G. Michael Lawrence
State Bar. No. 12045500

Lawrence & Stenson Law, PLLC
510 So. Congress #108
Austin, TX 78704
(512) 320 0400
(512) 320 0117 fax

CERTIFICATE OF CONFERENCE

I have attempted to contact Plaintiff's counsel regarding the allegations in the Complaint, and on October 1, 2013, attempted to contact Plaintiff's counsel regarding the Motion to Dismiss. Plaintiff's counsel returned one email but has not returned other inquires and has not returned the call regarding the Motion to Dismiss.



G. Michael Lawrence

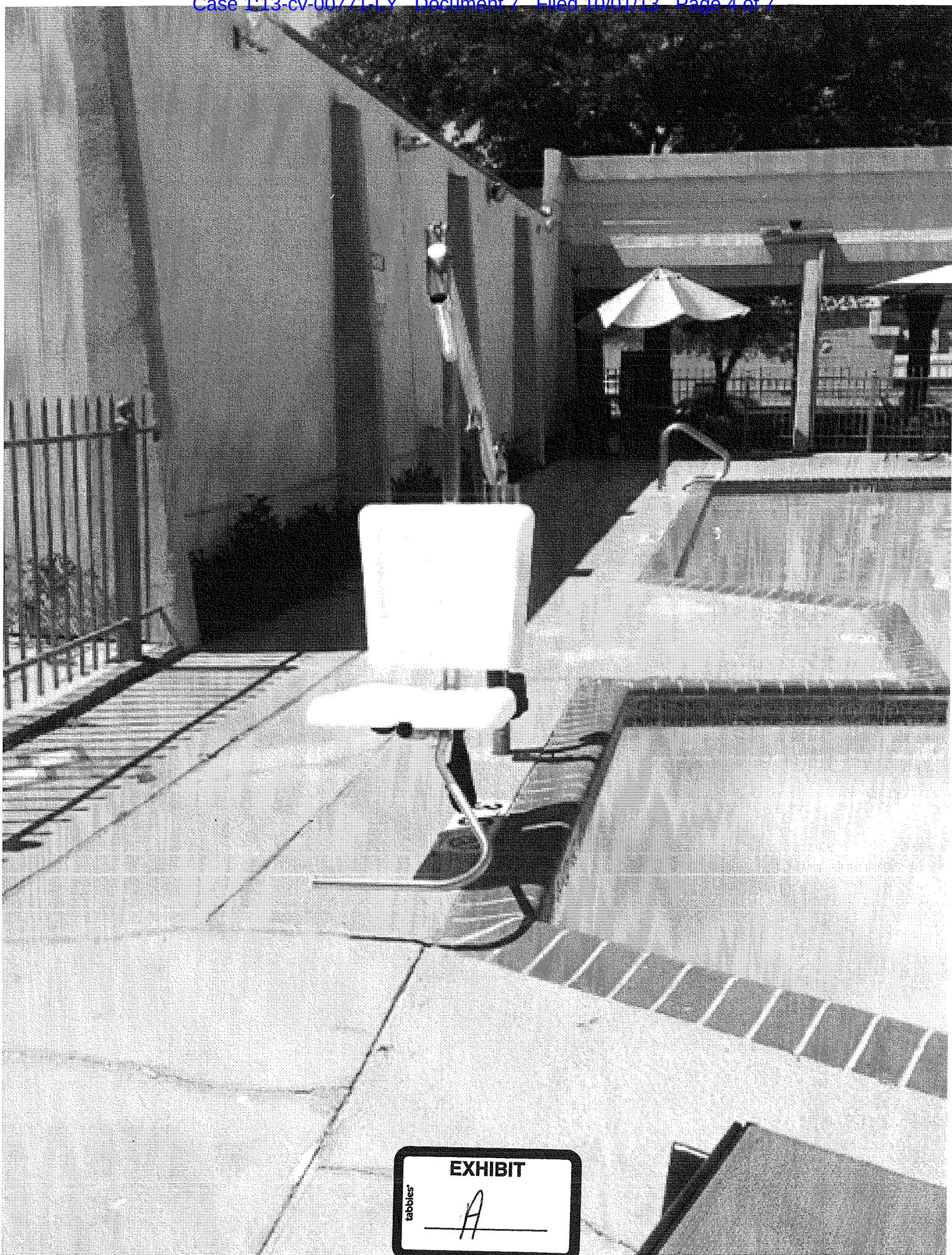
CERTIFICATE OF SERVICE

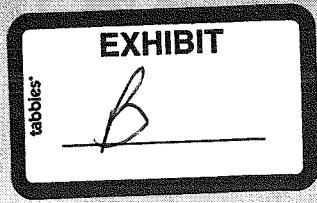
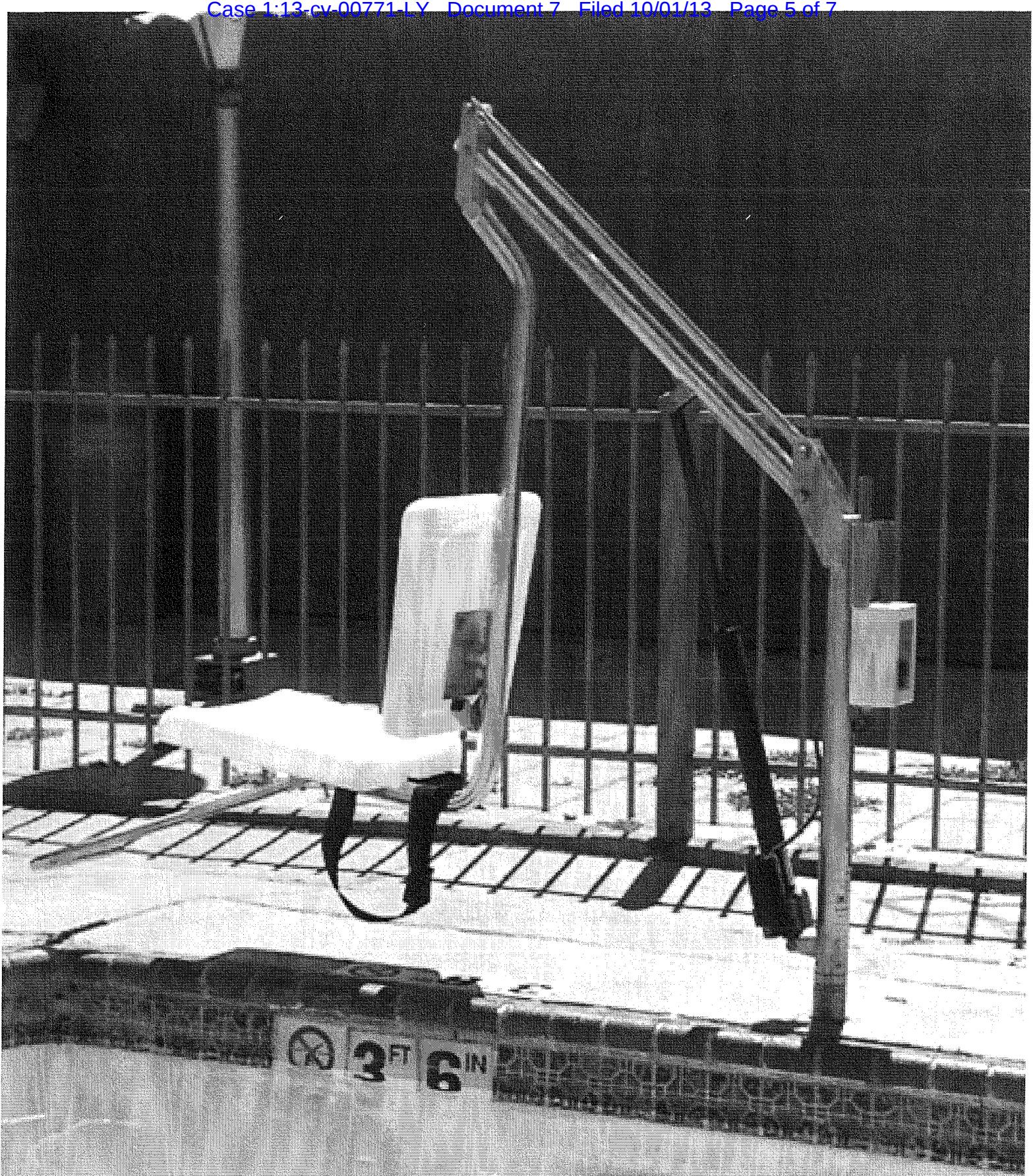
I hereby certify that on October 1, 2013, a true and correct copy of the foregoing instrument was faxed and sent by Electronic Service, to Dana Bowman, Plaintiff, by and through attorney of record:

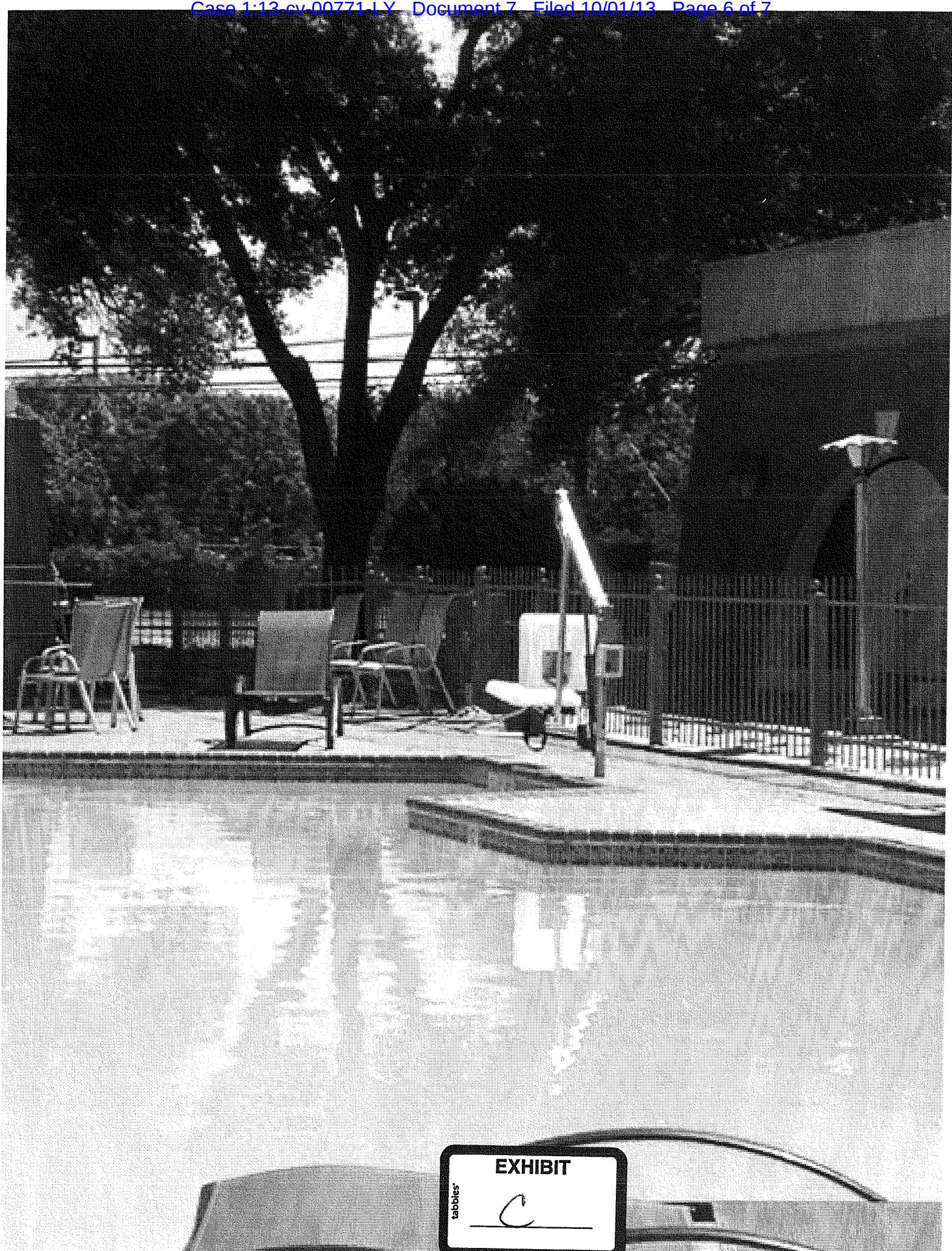
Eric G. Calhoun
TRAVIS & CALHOUN, P.C.
1000 Providence Towers East
5001 Spring Valley Road
Dallas, TX 75244
Fax: (972) 934-4101

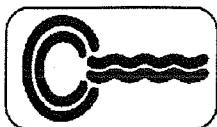


Michael Lawrence









Crystal Clear Pools & Spas
700 W Applegate Dr, Ste 100
Austin TX 78753-3610
(512) 339-9304
TICL 220

INVOICE

DATE INVOICE NUMBER
6/1/2012 86096

06/01/2012

BILL TO

Baymont Inn & Suites
4323 South IH-35
Austin, TX 78744

SHIP TO

Baymont Inn & Suites
4323 South IH-35
Austin, TX 78744

lmrlle@yahoo.com

REP

RENE

Send payments to: CRYSTAL CLEAR POOLS & SPAS
700 W APPLEGATE DR STE 100
AUSTIN TX 78753-3610

TERMS	DUE DATE	MONTH
Net 30	7/1/2012	June

ITEM	DESCRIPTION	QTY	UNIT COST	AMOUNT
GEN	Need to install ADA compliant pool lift at 4323 South IH-35. REMOVE A SMALL PORTION OF POOL DECK TO ATTACH BOND WIRE TO ANCHOR, CONCRETE IN ANCHOR, INSTALL I-LIFT AND TEST OPERATION. Sales Tax	1	3,671.81	3,671.81 278.18

We appreciate your business!

INVOICE TOTAL \$3,949.99

ACCOUNT BALANCE \$0.00

Questions about your account?
Call (512) 339-9304, or e-mail office@poolrelief.com.

1.5% INTEREST per month CHARGED TO AMOUNTS PAST DUE

Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin TX 78711, 1-800-803-9202, 512-463-6599; website:
www.license.state.tx.us/complaints.

EXHIBIT

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